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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/750,913      | 01/05/2004  | Jon B. Schneider     | 25815-10901         | 1982             |

7590 12/22/2005

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Washington, DC 20006

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| EXAMINER |
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GELLNER, JEFFREY L

|          |              |
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| ART UNIT | PAPER NUMBER |
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3643

DATE MAILED: 12/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/750,913

Applicant(s)

SCHNEIDER, JON B.

Examiner

Jeffrey L. Gellner

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 14 and 16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14, 16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 14 and 16 are rejected under 35 U.S.C. §102(b) as being anticipated by Kenmoku et al. (JP57-90087).

As to Claim 14, Kenmoku et al. discloses a permanent ground cover mulch (see translation in English at page 5, lines 1-4) self-coherent particulate magnetic material comprising a mixture of a particulate magnetic material (see translation in English at “ferromagnetic iron oxide” of page 5; lines 6-8 or “magnetite” of page 5, line 17) and a particulate magnetic attracting material (from last paragraph of page 3 of translation in English), the particulate magnetic material particles having a dimension of from about 1 to about 25 millimeters (“0.5 to 2mm” of page 5, 3<sup>rd</sup> para. of the translation in English ) and comprising at least 50% by volume of the mixture (from “ratio of 1:1” from lines 14-32 of page 5 of the translation in English).

As to Claim 16, Kenmoku et al. discloses a permanent ground cover mulch (see translation in English at page 5, lines 1-4) of a self-coherent particulate magnetic material comprising a mixture of a particulate magnetic material (see translation in English at “ferromagnetic iron oxide” of page 5; lines 6-8 or “magnetite” of page 5, line 17) and a particulate magnetically inert material (from “water-insoluble resin such as vinyl chloride resin”

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of lines 1-3 of page 6 of translation in English), the particulate magnetic material particles having a dimension of from about 1 to about 25 millimeters (“0.5 to 2mm” of page 5, 3<sup>rd</sup> para. of the translation in English) and comprising at least 50% by volume of the mixture (from “ratio of 1:1” from lines 14-32 of page 5 of the translation in English).

### *Response to Arguments*

Applicant's arguments filed 7 October 2005 as to claims 14 and 16 have been fully considered but they are not persuasive. The crux of Applicant's arguments are: (1) Kenmoku et al. does not disclose a much by discloses a soil conditioner, that may adsorb nutrients such as K, and does not disclose a particulate magnetic attracting material or a particulate magnetically inert material (Remarks page 4).

As to argument (1), Examiner considers a soil conditioner to be equivalent to a mulch especially when the language “mulch” is used in the preamble of the claim and adds no distinct limitation or definition. See MPEP 2111.02(II) for proposition that “[i]f the body of the claim fully and intrinsically sets forth all of the limitations of the claimed invention, and the preamble merely states, for example, the purpose of intended use of the invention, rather than any distinct definition of any of the claimed invention's limitations, then the preamble is not considered a limitation and is of no significance to claim construction” (citing *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298).

The mulch of Kenmoku et al. will adsorb positively charged ions (cations) when used in any medium. This is disclosed at the bottom of page 3 of the translation in English of Kenmoku et al. See MPEP 2112.01(II) for the proposition that compositions that have identical chemical

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properties have the same properties. Here, the instant invention and Kenmoku et al. have the same chemical composition, that being a particulate magnetic material in a growth medium.

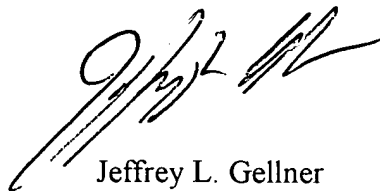
Kenmoku et al. discloses all the limitations of the instant claim language as shown in the above rejections.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey L. Gellner whose telephone number is 571.272.6897. The examiner can normally be reached on Monday-Friday, 8:30-4:00, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571.272.6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jeffrey L. Gellner  
Primary Examiner  
AU: 3643